

15 MAG . 3992

Approved: _____

MARTIN S. BELL

Assistant United States Attorney

Before: THE HONORABLE ANDREW J. PECK
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA

- v -

EUGENIA CANTIELLO,

Defendant.

:
: SEALED COMPLAINT

: Violation of
: 18 U.S.C. § 1001

: COUNTY OF OFFENSE:
: NEW YORK
----- X

SOUTHERN DISTRICT OF NEW YORK, ss:

JORDAN GOODMAN, being duly sworn, deposes and says that he is a Criminal Investigator with the United States Attorney's Office for the Southern District of New York, and charges as follows:

COUNT ONE

(False Statement)

1. On or about April 11, 2013, EUGENIA CANTIELLO, the defendant, in a matter within the jurisdiction of the executive branch of the Government of the United States, willfully and knowingly, did falsify, conceal, and cover up by trick, scheme, and device material facts, and made materially false, fictitious, and fraudulent statements and representations, to wit, CANTIELLO falsely affirmed in a sworn interview with the Securities and Exchange Commission ("SEC") Office of the Inspector General ("SEC-OIG") that, as of April 13, 2013, she was unaware that she and her husband were required to divest their stock holdings in certain entities regulated by the SEC, when in truth and in fact and as CANTIELLO well knew, she and her husband held stocks at that time that were prohibited under the SEC's ethical rules.

(Title 18 United States Code, Section 1001.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

2. I am currently employed as a Senior Criminal Investigator with the United States Attorney's Office for the Southern District of New York ("USAO") and I have been personally involved in the investigation of this matter. I have been a Criminal Investigator with the USAO Securities and Commodities Fraud Unit for over 11 years. Before that, I served as a Postal Inspector with the United States Postal Inspection Service for approximately eight years, during which I investigated financial and other crimes. I have received training in, and am generally familiar with, the workings of brokerage accounts and the trading of stocks, bonds, and other securities. I base this affidavit on that personal experience, as well as on my conversations with law enforcement agents and others, and my examination of various reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

The Defendant

3. I have spoken to a Senior Investigator ("Investigator-1") with the SEC, Office of the Inspector General ("SEC-OIG"). Investigator-1 has access to SEC employment records. From my conversations with Investigator-1, I have learned that EUGENIA CANTIELLO, the defendant, was originally hired by the SEC as a Compliance Examiner in 1991. She resigned from the SEC in 1999 and was rehired again by the SEC in 2004. She then worked as a Compliance Examiner until her resignation in November 2014. Throughout her employment with the SEC, CANTIELLO was based at the New York Regional Office, which is located in Manhattan. As a Compliance Examiner, CANTIELLO's job responsibilities include overseeing compliance with the nation's securities laws by broker-dealers, investment advisors, investment companies, clearing agencies and others. In her role as a Compliance Examiner, Cantiello had access to non-public information regarding entities regulated by the SEC.

4. Based on the information provided herein, I respectfully submit that there is probable cause to believe

that, in or about April 2013, EUGENIA CANTIELLO, the defendant, made multiple false statements to the SEC and its representatives regarding certain of her and her husband's stock holdings. Specifically, and among other things, CANTIELLO falsely represented that she was not aware that her and her husband's stock holdings were prohibited holdings under SEC ethical rules.

5. More specifically, in a sworn interview with SEC-OIG in April 2013, EUGENIA CANITELLO, the defendant, claimed that (a) she was not aware of the prohibited nature of those holdings until November 2012, and (b) she did not know that her husband's holdings in a known broker-dealer, "Company-1," were prohibited under the Ethical Rules until the time of the interview. In fact, at the time of the interview, CANTIELLO knew that her and her husband's holdings were in violation of the Ethical Rules and had known so as early as 2010.

SEC Rules

6. From my training and experience, discussions I have had with Investigator-1 and members of the SEC's Ethics Office (the "Ethics Office"), and my review of SEC releases and published materials, I have learned the following:

a. The SEC has long promulgated rules governing the conduct of its employees in order to ensure that the employees' personal conduct does not conflict with the SEC's mission of enforcing the nation's securities laws and regulating the markets. Among these rules are limits on the securities that SEC employees and their spouses can hold.

b. A "broker-dealer" is a person or entity engaged in the business of effecting transactions in securities himself, herself, or itself, or on behalf of others. Many broker-dealers are independent firms, but often, and increasingly, commercial banks, investment banks, and investment companies have subsidiaries and business units that engage in "broker-dealer" business (hereinafter, "broker-dealer arms").

c. Prior to in or around August 19, 2010, SEC employees and their spouses were prohibited from holding stock in broker-dealers, but were allowed to hold stock in certain other entities regulated by the SEC, including banks and banks with broker-dealer arms.

d. The Ethics Office is responsible for advising and counseling SEC employees on issues such as potential personal and financial conflicts of interest. SEC employees are instructed to contact Ethics Officers by phone or e-mail concerning potential ethical concerns that require advice or action.

e. At all times relevant to this Complaint, the SEC had rules governing the ethical conduct of its employees concerning permitted, prohibited, and restricted personal financial interests and transactions, among other things (the "Rules"). The Rules, which were codified at 17 C.F.R. Part 200, prohibited employees from purchasing or holding securities in entities directly regulated by the SEC, and required employees to "clear" any securities or related financial transactions with the SEC - that is, to submit a proposed transaction to the SEC and obtain permission from the SEC before executing the transaction. The prohibited securities included securities in stocks of broker-dealers. The Rules extended to the holdings and transactions of and/or on behalf of the members' and employees' spouses, unemancipated minor children, and persons for whom the members and employees served as legal guardian.

f. On or about August 19, 2010, the Rules were supplemented by new regulations on SEC employees (the "New Rules"). The universe of prohibited securities was expanded to include securities in banks with broker-dealer arms. The New Rules also conformed the SEC's ethics rules to ethical obligations promulgated by the Office of Government Ethics that applied to Executive Branch employees as a whole. As with the Rules, the New Rules applied to the holdings and transactions of members' and employees' spouses.

g. The New Rules were announced in a public release, Release No. 34-62501.

7. I have reviewed several documents, including e-mails provided by the Ethics Office and by the SEC. From my review of these documents, and from discussions with individuals from the Ethics Office, I have learned the following:

a. In the weeks prior to and after the implementation of the New Rules -- beginning in or around July 2010 -- the Ethics Office circulated to its employees, including EUGENIA CANTIELLO, the defendant, a series of e-mail bulletins concerning the New Rules.

b. For example, an e-mail sent in or around September 2010 included a link to a document stored on the SEC's Intranet entitled, "Quick and Easy Guidance on Divesting Now-Prohibited Holdings" (the "Guidance"). The Guidance specifically addressed the need for employees to divest holdings in prohibited stock that they held prior to the implementation of the New Rules. The Guidance instructed employees to consult with Ethics Counsel regarding whether it was permissible to hold stocks that the employees had held for years prior to the implementation of the New Rules. The Guidance further directed that, if divestiture was necessary, employees should clear the sale through the Ethics Program System or "EPS," the SEC's electronic clearing system through which proposed trading activity could be reviewed and approved or denied, and then divest if appropriate.

Cantiello's Prohibited Stock Holdings

8. I have reviewed financial records pertaining to the stock holdings of EUGENIA CANTIELLO, the defendant, and her husband. From my review of these records, I know that prior to the implementation of the New Rules, EUGENIEIA CANTIELLO, the defendant, and her husband held stock in Company-1, a registered broker-dealer.

9. I have reviewed financial records pertaining to the stock holdings of EUGENIA CANTIELLO, the defendant, and her husband, as well as internal SEC correspondence. From my review of these documents, I am aware of the following:

a. Between 2007 and 2008, CANTIELLO's husband purchased approximately 425 shares of stock in Company-1, at a cost of over \$44,500. CANTIELLO did not pre-clear those purchases with the Ethics Office, as required by the ethical rules. CANTIELLO also retained approximately \$4,000 worth of stock in Company-1 acquired during her break in employment with the SEC between 1999 and 2004.

b. On or about September 10, 2012, a representative of the Ethics Office instructed CANTIELLO via e-mail to divest her prohibited holdings in Company-1, noting specifically that Company-1 was a "prohibited holding for SEC employees" and that she must divest her holdings in Company-1 no later than September 24, 2012. CANTIELLO sold her remaining shares in Company-1 on or about October 1, 2012. Her husband continued to hold shares in Company-1.

10. From my review of e-mail conversations between EUGENIA CANTIELLO, the defendant, and other SEC employees, I have learned that on or about October 22, 2012, CANTIELLO jokingly stated to her supervisor that she had committed an "SEC violation" because she held stock in Company-1.

Cantiello's False Statements

11. On or about April 11, 2013, the SEC-OIG interviewed EUGENIA CANTIELLO, the defendant, under oath. I was present for that interview. Counsel from the National Treasury Employees Union, representing CANTIELLO, was also present. From my own recollection, and my review of a transcript of that proceeding, I know the following:

a. Asked if she was aware that the Ethics Rules prohibited employees from holding a financial interest in entities regulated directly by the commission, including broker-dealers, CANTIELLO falsely stated, "I know that now." Asked when she first learned that, she falsely stated that she had always been confused about the rule until an ethics training she received in November 2012.

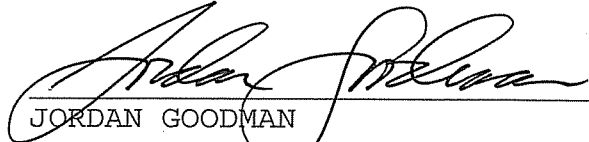
b. During the interview, CANTIELLO further falsely stated that she did not know that Company-1, a broker-dealer, was a prohibited holding.

13. I have interviewed another Compliance Examiner in the New York Regional Office ("Colleague-1"). Colleague-1 worked with EUGENIA CANTIELLO from 2004 until 2014. From my interview with Colleague-1, I have learned the following:

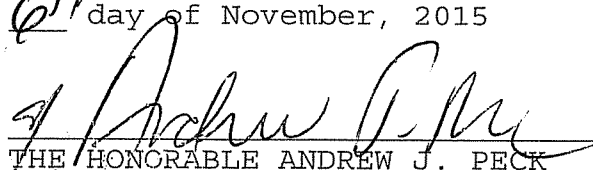
a. Colleague-1 stated that when the New Rules were implemented in 2010, CANTIELLO complained that she would have to sell stock.

b. Colleague-1 further stated that CANTIELLO knew that she held prohibited holdings in 2010, and that her husband held stock prohibited by SEC rules, and was upset because she "did not want to take a loss."

WHEREFORE, deponent prays that defendant be imprisoned, or bailed, as the case may be.


JORDAN GOODMAN
Criminal Investigator
United States Attorney's Office
Southern District of New York

Sworn to before me this
6th day of November, 2015


THE HONORABLE ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK